UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/1996/SR.27
29 August 1996

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-eighth session

SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 23 August 1996, at 3 p.m.

Chairman: Mr. EIDE

later: Mr. ALI KHAN

later: Mr. EIDE

CONTENTS

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-13798 (E)

CONTENTS (continued)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(b) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(c) INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (continued)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

1. The CHAIRMAN said that if there was no objection, he would take it that the Sub-Commission wished to dispense with introductions to draft resolutions.

2. It was so decided.

Elimination of racial discrimination:

(a) Measures to combat racism and racial discrimination and the role of the Sub-Commission (agenda item 5) (continued)

Draft resolution E/CN.4/Sub.2/1996/L.22

3. The draft resolution was adopted without a vote.

Protection of minorities (agenda item 17) (continued)

Draft resolution E/CN.4/Sub.2/1996/L.25

4. The CHAIRMAN said that Mr. Guissé had become a sponsor of the draft resolution.

5. Mr. ALFONSO MARTÍNEZ said it was illogical, in operative paragraph 6, to invite the Working Group to elaborate guidelines on the content and scope of the rights contained in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, when that Declaration had already been the subject of lengthy discussions in the higher bodies which had adopted it. He proposed amending the beginning of the paragraph so that it read: "Invites the Working Group to elaborate and submit to the Sub-Commission and the Commission on Human Rights for their consideration criteria on the content and scope ...".

6. With regard to operative paragraph 11, he said it was not enough to recommend that the relevant bodies and individuals should continue to pay due regard to the principles of the Declaration; the actual situation of the people referred to in the Declaration had to be taken into account. He therefore proposed amending the end of the paragraph so that it read: "... the principles contained in the Declaration as well as the situation of the people referred to in that Declaration".

7. Mr. MAXIM said he had two objections to operative paragraph 14. Firstly, to talk of "dialogue ... between minorities and Governments" was to put, wrongly, minorities on an equal footing with Governments, with the implication that they could therefore choose not to enter into dialogue. Secondly, the word "conciliation" suggested that there was a conflict between Governments and minorities; that was not always the case. He therefore proposed to amend the beginning of the paragraph to read: "Encourages States and the international community to facilitate dialogue and cooperation between minorities and the majority population."

8. Mr. FAN Guoxiang said that Mr. Maxim's objections were well-founded, and might well be applied to the ninth preambular paragraph too. Furthermore, he felt that the reference to the international community in operative paragraph 14 was inappropriate, considering that the resolution of any disputes was an internal matter. He was also concerned that to encourage the participation of all concerned (tenth preambular paragraph) could open the door to so-called "conflict entrepreneurs" who were more interested in exploiting a conflict than in resolving it.

9. After a discussion in which Mrs. DAES, Mr. ALFONSO MARTÍNEZ and Mr. YOKOTA took part, the CHAIRMAN suggested that while there appeared to be agreement on the proposed amendments to operative paragraphs 6 and 11, the discussion should be deferred to allow for further consultations on operative paragraph 14 and the preambular paragraphs.

10. It was so decided.

Freedom of movement:

(a) Situation of migrant workers and members of their families

(b) Population displacements

(c) Right to leave any country, including one's own, and return to one's own country (agenda item 18) (continued)

Draft resolution E/CN.4/Sub.2/1996/L.16

11. The CHAIRMAN said that Mr. Alfonso Martínez, Mr. Bengoa, Mr. Boutkevitch, Mr. El-Hajjé, Mr. Guissé, Mrs. Gwanmesia, Mr. Joinet and Mr. Mehedi had become sponsors of the draft resolution.

12. Mr. MEHEDI voiced concerns that the fourth preambular paragraph included the right to seek asylum, but not to enjoy it.

13. Mr. BOSSUYT added that, in the same paragraph, no mention was made of seeking and enjoying asylum "from persecution".

14. After a discussion in which Mr. BOSSUYT, Mr. MEHEDI, Mr. ALFONSO MARTÍNEZ, Mrs. WARZAZI and Mrs. GWANMESIA took part, Mr. ALFONSO MARTÍNEZ pointed out that the relevant paragraph was faithful to the text to which it referred, Sub-Commission resolution 1995/13, and could not be changed. Moreover, the previous speakers' concerns were adequately addressed in operative paragraph 4.

15. The CHAIRMAN said it was understood that all language versions should carefully reflect, in operative paragraph 4, the first paragraph of article 14 of the Universal Declaration of Human Rights.

16. The draft resolution was adopted without a vote.

Draft decision E/CN.4/Sub.2/1996/L.24

17. Mr. ALFONSO MARTÍNEZ said that while he supported the idea of entrusting Mr. Boutkevitch with the task of preparing a working paper on the right to freedom of movement, he found the terms of reference too vague and suggested that the words "and related issues" should be replaced by the following phrase: "in particular the content of that right, its effective implementation and possible obstacles to its enjoyment".

18. Mr. JOINET noted that the right to freedom of movement raised two radically different issues depending on whether the movement in question was to take place within national boundaries or between one country and another. The proposed working paper should take into account relevant studies already undertaken by the Sub-Commission and other United Nations bodies.

19. Mrs. MBONU, supported by Mrs. PALLEY, said that the terms of reference had been deliberately left vague to give the author of the working paper maximum leeway in the early stages of his work. More specific terms of reference would be drawn up at the next session in the light of the working paper.

20. Mr. ALFONSO MARTÍNEZ regretted that, owing to lack of coordination, he had not been informed in advance of the purpose of the draft decision.

21. Mr. JOINET said that Guideline No. 2 concerning the Sub-Commission's methods of work (resolution 1992/8, annex) dealt explicitly with all such cases.

22. The draft decision was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1996/L.29

23. The CHAIRMAN noted that Mr. Boutkevitch wished to be included among the sponsors of the draft resolution.

24. The draft resolution was adopted without a vote.

Contemporary forms of slavery (agenda item 15) (continued)

Draft resolution E/CN.4/Sub.2/1996/L.15

25. The CHAIRMAN announced that the document reference in operative paragraph 1 should read E/CN.4/1996/26.

26. He noted that Mr. Yokota wished to be included among the sponsors of the draft resolution.

27. Mr. ALFONSO MARTÍNEZ said that when the in-depth study referred to in the draft resolution had been commissioned, he had expressed the view that a general study of rape should precede any study of particular aspects of the problem. He wished to place that view on record again at the current session.

28. The draft resolution was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1996/L.27

29. The CHAIRMAN announced that the document reference in operative paragraph 38 should read E/CN.4/1996/53.

30. He noted that Mrs. Gwanmesia, Mr. Sang Yong Park and Mr. Yimer wished to be included among the sponsors of the draft resolution.

31. The draft resolution was adopted without a vote.

Promotion, protection and restoration of human rights at national, regional and international levels:

(a) Thirtieth anniversary of the adoption of the International Covenants on Human Rights

(b) Prevention of discrimination and protection of children: human rights and youth

(c) Human rights and disability

(agenda item 16) (continued)

Draft resolution E/CN.4/Sub.2/1996/L.20

32. The CHAIRMAN noted that Mr. Ali Khan wished to be included among the sponsors of the draft resolution.

33. The draft resolution was adopted without a vote.

Human rights and scientific and technological developments (agenda item 12) (continued)

Draft decision E/CN.4/1996/L.28

34. The draft decision was adopted without a vote.

International peace and security as an essential condition for the enjoyment of human rights, above all the right to life (agenda item 13) (continued)

Draft resolution E/CN.4/Sub.2/1996/L.17

35. The CHAIRMAN noted that Mr. Fix Zamudio, Mr. Guissé, Mr. Joinet and Mr. Mehedi wished to be included among the sponsors of the draft resolution.

36. Mr. YIMER proposed that the last preambular paragraph should be revised to read: "Recalling the Advisory Opinion of the International Court of Justice of 8 July 1996 on the legality of the threat or use of nuclear weapons."

37. The CHAIRMAN noted that the other sponsors of the draft resolution agreed to the revision.

38. Mr. ALFONSO MARTÍNEZ drew attention to an apparent contradiction between the terms of operative paragraph 1 of the draft resolution, which called for the elimination of weapons of mass destruction and in particular nuclear weapons, and those of operative paragraph 1 of draft resolution E/CN.4/Sub.2/1996/L.18, which the Sub-Commission was about to consider and which urged that the production and spread of such weapons should be curbed.

39. Mr. YIMER said that the draft resolution before the Sub-Commission dealt specifically with nuclear disarmament and should be kept separate from the other more general draft resolution.

40. The draft resolution was adopted without a vote.

41. Mr. WEISSBRODT said that although he agreed with the substance and intention of the draft resolution just adopted, he felt that it referred to an ideal world. Unfortunately, in the real world weapons of mass destruction, particularly nuclear weapons, continued to play a deterrent role by affording global protection against threats to peace, as had been noted by the International Court of Justice.

Draft resolution E/CN.4/Sub.2/1996/L.18

42. The CHAIRMAN noted that Mr. Fix Zamudio, Mr. Guissé, Mrs. Gwanmesia, Mr. Joinet, Mr. Khalil, Mr. Mehedi and Mr. Yokota wished to be included among the sponsors of the draft resolution.

43. Mrs. PALLEY said that the original sponsors had agreed to delete the sixth preambular paragraph owing to a difference of opinion regarding the compatibility of the production, sale and use of weapons of mass or indiscriminate destruction with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She hoped that the additional sponsors agreed to that revision.

44. Mr. YOKOTA proposed that the opening phrase of operative paragraph 2 (a) should be revised to read "To collect information from Governments, the component United Nations bodies and agencies, and non-governmental organizations."

45. The CHAIRMAN noted that the other sponsors agreed to the revision proposed by Mr. Yokota.

46. Mr. GUISSÉ said that he regretted the proposed deletion of the sixth preambular paragraph by the original sponsors.

47. Mrs. GWANMESIA said that if the sixth preambular paragraph was deleted, she would withdraw her sponsorship of the draft resolution.

48. Mr. WEISSBRODT said that the jurisprudence of the Human Rights Committee, the Committee against Torture and the European Court of Human Rights, which he had thoroughly studied, provided no support for the proposition stated in the sixth preambular paragraph of the draft resolution. As he was otherwise in

agreement with the draft resolution, he appealed to its sponsors to omit the paragraph in question, which invited criticism of the adequacy of the Sub-Commission's legal judgement.

49. Mrs. GWANMESIA asked why such an important draft resolution had been submitted only at the last moment.

50. Mr. MAXIM said that the debate was unnecessary. The use of weapons of mass destruction was contrary to all human rights, not just those referred to in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The paragraph in question should either be deleted or extended to cover all human rights instruments.

51. Mr. JOINET agreed with what Mr. Maxim had just said and suggested that in future the Chairman should ask whether there were any additional sponsors at the end, rather than at the beginning, of a discussion.

52. The CHAIRMAN suggested that, in view of the disagreement, the Sub-Commission should postpone further consideration of the draft resolution until a later date.

53. Mr. ALFONSO MARTINEZ said that while he had no objection to the discussion being postponed, he wondered what the procedural position was when the original sponsors were subsequently joined by additional sponsors who then disagreed with a subsequent amendment agreed upon by the original sponsors.

54. Mrs. PALLEY said that in view of the importance of the paragraph concerned, it would be wise to postpone further consideration. If the use of weapons of mass destruction was a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it was also a breach of the Geneva Conventions. In addition, the issue of compensation for those injured arose.

55. Mr. YIMER said that the question of the sixth preambular paragraph was basically a matter for discussion among the sponsors.

56. The CHAIRMAN suggested that the sponsors ought to meet together to decide whether to retain, amend or delete the paragraph.

57. It was so decided.

Draft resolution E/CN.4/Sub.2/1996/L.26

58. Mrs. WARZAZI pointed out that in the second preambular paragraph "1996" should read "1995".

59. Mr. ALFONSO MARTINEZ said that he could not support the draft resolution. The real objection was to the indiscriminate use of anti-personnel land-mines rather than to their production. Moreover, the use of the word "Regretting"

in the eighth preambular paragraph was unfortunate because the result of the Review Conference which the Sub-Commission would be "regretting" merely reflected the differences among States.

60. Mr. CHERNICHENKO said that, while he supported the draft resolution, he could not help pointing out that it went beyond the bounds of the Sub-Commission's terms of reference. The subject matter was disarmament, not human rights. The adoption of resolutions on topics outside the Sub-Commission's sphere of competence, however nobly intended, could undermine its reputation.

61. Mr. WEISSBRODT agreed with Mr. Chernichenko. The subject-matter of the draft resolution currently under consideration was, however, closer to the Sub-Commission's mandate than the texts of draft resolutions E/CN.4/Sub.2/1996/L.17 and E/CN.4/Sub.2/1996/L.18 had been. He agreed with Mr. Alfonso Martínez that the use of the word "Regretting" in the eighth preambular paragraph was unfortunate. Its inclusion would serve to undermine the agreement reached at the Review Conference and thereby to reduce pressure on Governments to ratify it.

62. The CHAIRMAN noted that Ms. McDougall was a sponsor of the draft resolution.

63. Mr. GUISSÉ said that by adopting the draft resolution the Sub-Commission would only be seeking to protect the right to life. The text was therefore in no way contrary to its mandate. The shortage of funds for land-mine clearing was particularly regrettable.

64. Mr. KHALIL said that the issue of anti-personnel land-mines was certainly within the Sub-Commission's mandate. He pointed out that several million land-mines laid during the Second World War were still deployed in the western desert of Egypt.

65. Mrs. WARZAZI said that the subject of anti-personnel land-mines was a humanitarian issue originally raised by the International Committee of the Red Cross and therefore fell within the Sub-Commission's mandate.

66. Mr. JOINET said that, having seen the effects of land-mines in war, he supported the draft resolution. He disagreed with Mr. Chernichenko, since the forces that could produce changes in society included not only States but also the Red Cross and other organizations. Moreover, many people had come to the Palais des Nations to demonstrate against anti-personnel land-mines, the victims of which should have the Sub-Commission's support.

67. Mr. MEHEDI wondered why only land-mines were referred to, to the exclusion of floating mines.

68. The draft resolution was adopted without a vote.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(b) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(c) INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

(agenda item 10) (continued) (E/CN.4/Sub.2/1996/16, 17, 18, 19 and Corr.1; E/CN.4/Sub.2/1996/NGO/2, 4, 5, 11, 17; E/CN.4/Sub.2/1996/26; E/CN.4/Sub.2/1996/NGO/30-31)

69. Mr. GUISSÉ said that in an imperfect world the right to a fair trial should be understood as the set of measures, provisions and practices which made it possible for all citizens to enjoy legal and material equality before the public services, particularly the courts. Legal equality entailed that all individuals should have available to them formal and procedural rules of access to justice, without any discrimination. In domestic law the initiation of proceedings by individuals was limited by many administrative, economic, diplomatic, parliamentary and other immunities which were sometimes abused.

70. For justice to be done it was essential that the courts should be independent of all political, economic or social power. For that purpose judges must be protected from need and their honesty and loyalty must be verified. In addition, the right to a fair trial required that justice should be brought closer to the ordinary man, since geographical distance from the court often discouraged citizens to such an extent that many injustices regularly went undeterred. The cost of justice also made it inaccessible to many.

71. All countries recognized the principle that justice was administered in the name of the people, even if its greatest victim was the people itself. The State should therefore undertake to combat all obstacles to the realization of the right to a fair trial by developing a system of court-appointed lawyers, legal aid and public information campaigns. Justice must be served and not be made use of. The United Nations, its affiliated organizations and Governments should work together to that end, and the United Nations must be equipped with the resources it needed to implement the rules which it had created for that purpose. States should agree to allow their responsibility to be invoked before international bodies and to allow claims for compensation for damage incurred within their territory to be heard in their domestic courts.

72. All measures tending to consolidate the right to a fair trial should be encouraged and brought to the attention of States. There was something wrong with a two-speed system of justice under which victims of rape in Bosnia and Herzegovina and former "comfort women" in the Far East were taken care of while unfortunate Rwandese women who had also been raped were offered no reparation. Attention should also be paid to a new situation in which soldiers seized upon the sole sources of water supply in order to oblige women who had to care for young children to lend them their bodies in return for a

bucketful of the precious liquid. While on the subject of children, he wished to express his sorrow regarding the events that had recently come to light in Belgium.

73. In short, democratic societies could not ignore the importance of the right to a fair trial for the preservation of social peace and for the active participation of all citizens in community life, and all States, international organizations and individuals had an obligation to respect and protect it.

74. Mr. Ali Khan took the Chair.

75. Ms. JACQUES (Commission of the Churches on International Affairs of the World Council of Churches) stressed the importance of the Sub-Commission's work on the question of impunity, the control of which was essential for protecting the dignity of victims and promoting their individual and collective rights. Among the serious attacks on civil and political rights carried out by civil and military powers, violations of the right to life seemed to be increasingly unchallenged. In addition, however, serious violations of economic, social and cultural rights were being perpetrated by economic powers responding only to the unbridled search for profit without having to render accounts to anyone for the dramatic consequences of their decisions. The awareness, affirmation and indivisibility of human rights must therefore be reflected in a firm determination not allow serious violations to go unpunished.

76. The World Council of Churches wished, in particular, to express its thorough agreement with the victim-based approach adopted by the Special Rapporteur on impunity in his final report (E/CN.4/Sub.2/1996/18). In addition to its legal considerations, impunity had deep ethical, theological, social and political implications. History had produced only too many examples of the disastrous consequences of allowing a permanent "culture of impunity". Although the role and responsibility of States was essential for defining and applying legal rules, the responsibility of civil society, including the Churches, was no less great. First, it had to ensure that the principles were not dead letters and then it had to contribute, through education and concrete on-the-spot witness, to building a culture of truth, justice and peace capable of resisting all the justifications of impunity. The World Council of Churches therefore wished to express its full support for the work done by the Sub-Commission on that question, which it hoped would be reflected in real progress at the level of international law.

77. Mr. WAREHAM (International Association against Torture) said that the self-styled "leading Western democracies" had traditionally escaped the rigorous scrutiny applied by United Nations human rights mechanisms to other countries, on the grounds that their record of observance of civil and political rights was irreproachable. Within the context of the struggle to ensure application of a single standard across the board, the example set by Mr. Glélé-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, had had enormous significance, and the human rights microscope was now focused more closely on the Western democracies. The United States of America was a case in point.

78. The realities of police violence and capital punishment in the United States contrasted sharply with its posture of moral superiority in the area of civil and political rights. In a recent report on police brutality and excessive force in the New York City Police Department, Amnesty International had concluded that international standards as well as United States law and police guidelines prohibiting torture or other cruel, inhuman or degrading treatment appeared frequently to have been violated with impunity.

79. He cited the case of Aswon Watson, a young black man shot dead by three white undercover police officers in Brooklyn on 13 June 1996, in an incident that bore all the hallmarks of a racially motivated execution by death squad. There had been no official investigation into the killing, and to date no rational explanation had been provided for Watson's death. A 1992 Amnesty International report had found that in Los Angeles, too, police officers who were members of a white supremacist organization engaged in death squad activities. The existence of death squads in the United States was hardly surprising, for the United States Government had trained the death squads that had operated throughout Central and South America since the 1970s.

80. As to the death penalty, a number of studies and reports by NGOs documented the racial discrimination prevalent in its application. On 18 July 1996, Ziyon Yisrayah had been the victim of a political assassination carried out by the State of Indiana after a trial marked by a number of procedural irregularities. Yisrayah had been sentenced to death for killing a police officer, despite forensic evidence that cast doubt on the prosecution's case. On 17 July 1996, in response to a request by the International Association against Torture, the Centre for Human Rights had transmitted an Urgent Action Appeal requesting the State of Indiana to stay execution. That same day, following pressure from his organization, the Department of State had forwarded the United Nations request to the Indiana authorities. The request had been ignored, and Yisrayah had been executed the following morning. That was just one of many examples of racially and politically motivated capital punishment in the United States, in violation of the International Covenant on Civil and Political Rights. The United States Government must now respond to the repeated requests by the Special Rapporteur on extrajudicial, summary or arbitrary executions, to be permitted to visit the United States to discuss the issue of capital punishment.

81. Mrs. ASSAAD (International PEN) said that the six-monthly report of her organization's Writers in Prison Committee, published in June 1996, documented a worldwide pattern of imprisonment and even killing of those who exercised their right to freedom of expression, listing 125 writers serving long prison sentences linked to their peaceful activities. In China, 27 writers and journalists charged with "counter-revolution" were serving sentences of up to 20 years. Others were administratively detained without trial, serving sentences of up to three years. Most of the prisoners were held for advocating political change. The remainder were journalists serving sentences of up to life imprisonment for leaking State secrets, although in some cases the definition of a State secret was unclear. Eleven other prisoners were held in Tibet for supporting Tibetan independence through their writings.

Repeated appeals to the Chinese authorities to establish the right to free expression in line with international standards had met with no concrete response.

82. Hopes that the release of the opposition leader Aung San Suu Kyi in July 1995 would be followed by the release of other political prisoners in Myanmar had been disappointed. Thirteen writers and journalists serving long prison terms of up to 20 years remained in detention. All were held for their support of and involvement in the opposition movement. With increased repression of supporters of that movement, the previous year's optimism had subsided.

83. In Turkey, despite a recent amendment to article 8 of the Anti-Terror Law which had been widely used against writers commenting on the Kurdish question, at least 40 writers and journalists were in prison, and several more had disappeared. Other legislation, including article 312 of the Turkish Penal Code, was now used against those discussing the Kurdish issue. About 500 laws or articles had been identified which could be used to stifle free speech, and international guarantees on freedom of expression did not override domestic law. Torture had been described as routine in Turkish prisons.

84. In Nigeria, four journalists had been sentenced to 15 years in prison by a military tribunal which had fallen far short of international standards for fair trial. Other writers and journalists continued to be arrested in Nigeria. Most were held without charge or trial and released after several weeks, but at least one had been held for over a year. International PEN called on the Governments of those countries that suppressed freedom of expression to release those held solely for peaceful expression of their views, and to review their legislation so as to ensure that there was no legal means whereby an individual could be imprisoned for exercising the right to free expression.

85. Mr. MEJIA (World Organization against Torture) said that there was no doubt of the causal link between violations of human rights and the degree of independence and impartiality of the judiciary. In most of the countries where violations occurred, the judiciary was prevented from performing its functions. Thus, in Tunisia, Khémaïs Chammari, a lawyer, human rights defender and member of the Social Democratic Movement, accused of handing details of the trial proceedings in the case of Mohamed Moadda to a Belgian lawyer, had been sentenced to five years in prison for high treason and betraying State secrets. Mr. Moadda, President of the Social Democratic Movement, arrested in October 1995 for denouncing illegal actions of the authorities, had been sentenced to 11 years in prison for breaching State security. Leaders of various Tunisian human rights organizations had also been detained on similar charges.

86. In Egypt, where the judiciary had also been unable to maintain its independence and impartiality, many young people and lawyers were detained, ill-treated or tortured following the overruling of judicial decisions by the administrative authorities. In Bhutan, victims of the national cohesion process initiated in the late 1980s continued to be deprived of their rights as a result of the subordination of the judiciary to the authority of the monarch. In Peru, the judiciary had been weakened and stripped of its powers,

an Amnesty Law had been promulgated to protect perpetrators of human rights violations, and legislation had been passed to prevent that Law from being challenged in the courts. The Sub-Commission would recall that the Human Rights Committee, at its fifty-seventh session, had called on the Government of Peru, inter alia, to repeal those laws, to restore the authority of the judiciary, to investigate human rights violations and to end impunity.

87. Mr. ARTUCIO (International Commission of Jurists) said that the draft set of principles contained in Annex II to the final report by Mr. Joinet on the impunity of perpetrators of violations of human rights (E/CN.4/Sub.2/1996/18) constituted an excellent basis for the drafting of guidelines for States in combating impunity, but that certain aspects of the draft needed to be revised. One such aspect concerned the scope of the study. The principles proposed took only partial account of the problem; for the fight against impunity must not be directed solely at a dictatorial or undemocratic past, but must also include present and future situations and impunity in democratic regimes. His assertion was confirmed by paragraph 91 of Part II of the Vienna Declaration and Programme of Action, and by Sub-Commission resolution 1992/23, neither of which limited the scope of the study. It was imperative to continue that study until a set of principles could be adopted which covered past, present and future situations, regardless of whether the State concerned was undergoing a transition from dictatorship or authoritarianism towards democracy. His organization undertook to give the Special Rapporteur every assistance in that task.

88. Ms. TANAKA (International Movement against All Forms of Discrimination and Racism), welcoming the recent submission of draft resolution E/CN.4/Sub.2/1996/L.23 on the right to a fair trial, said that her organization was deeply concerned at the number of unfair trials in Japan. Many court rulings had been overturned following retrials, and in some cases persons sentenced to death or life imprisonment had been found innocent many years later. Yet no substantial efforts had been made to investigate how their human rights had been denied. It was even argued that erroneous judgements were often brought about by decisions of the police to refuse defence counsel access to evidence that might favour the accused. Under article 14 of the International Covenant on Civil and Political Rights, a defendant must be accorded adequate facilities for the preparation of his defence. All relevant material and evidence should thus be made available to the defence lawyers.

89. In its statements at the forty-fifth and forty-seventh sessions of the Sub-Commission, her organization had referred to the Sayama case involving Mr. Kazuo Ishikawa, who for 33 years had protested his innocence of a murder for which he had been convicted. In 1986 his legal representatives had applied to the Tokyo High Court for a retrial and had requested the High Prosecutor's Office to disclose records of police interrogation and a list of the relevant evidence. The prosecutors had persistently refused that request, on the grounds that the list should be kept secret to protect individuals' privacy, even though the defendant's representatives had promised that the list would not be made public.

90. On 4 November 1993, having considered the third periodic report of Japan (CCPR/C/70/Add.1 and Corr.1 and 2), the Human Rights Committee had expressed

its concern that in Japan the legal representatives of the defendant did not have access to all relevant material in the police record, and had recommended that all guarantees relating to the facilities for the preparation of the defence should be observed. Moreover, in 1988 the Japan Federation of Bar Associations had proposed legislative measures to allow disclosure of material evidence held by the police. The Prosecutor's refusal to disclose evidence in the Sayama case was thus incompatible with article 14 of the Covenant.

91. In view of the fact that, at its fifty-second session, the Commission had taken no action on the proposal to consider the desirability of drafting a third optional protocol to the Covenant aimed at guaranteeing under all circumstances the right to a fair trial and a remedy, the Sub-Commission might wish to urge the Commission to give urgent consideration to taking appropriate action in that regard at its fifty-third session in 1997, and, should it deem it appropriate to establish the proposed open-ended working group, to authorize that group to give particular attention to the elaboration of minimum guarantees for a fair trial as provided for under article 14 of the Covenant.

92. Mr. Eide resumed the Chair.

93. Ms. MARWAH (International Institute for Non-Aligned Studies) said that, while State agents who violated human rights were nominally subject to some discipline, terrorists and mercenaries were answerable to no one. In Jammu and Kashmir alone, over 100 terrorist groups had engaged in all manner of massive atrocities for the past seven years. Of particular concern was the fact that the leaders of some of those groups claimed to be the true representatives of Kashmiris. They had acknowledged in recorded interviews that they had been provided with weapons and training by Pakistan; yet the blame for human rights violations in Kashmir continued to be laid at the door of India. Those non-State parties who operated outside the ambit of the law with impunity must be treated even more strictly than other violators of human rights, as must States that armed and supported them; otherwise, States would be left with no choice but to fight them on their own terms, thereby destroying the sanctity of the rule of law.

94. Mr. DEMETRIOU (International League for the Rights and Liberation of Peoples) said that deviations from normal judicial procedures in time of public emergency provided for under article 4 of the International Covenant on Civil and Political Rights must respect certain non-derogable rights derived from the fundamental right to life and physical integrity. In Turkey, lamentably, non-derogable rights were not respected. Constitutional and juridical provisions and the 1991 Anti-Terror Law had restricted the right to defence, abolished distinctions in treatment between detainees, permitted torture, and contributed to impunity, abysmal prison conditions and the use of force to quell discontent.

95. Under article 4 of the Covenant, emergency measures were permissible only in so far as they were not inconsistent with international law and did not involve discrimination. Under the Anti-Terror Law, however, all individuals or members of groups who posed a threat to the integrity of the Turkish State were considered terrorists. As a result, thousands of Kurds and their supporters had been arrested and labelled as Kurdish Workers' Party (PKK)

terrorists. In reacting to the existence of an armed movement, the Turkish Government had institutionalized ethnic discrimination. While States must protect their integrity and sovereignty from disruptive elements, they must also respect fundamental human rights. Those two principles were not mutually exclusive.

96. Ms. BALLIVIAN (International League for the Rights and Liberation of Peoples), referring to the "right to know" and the "duty to remember" in the context of action to combat impunity, said that States' archives were an essential element in the search for the truth, but were generally withheld from investigatory commissions and victims on grounds of State security. An example was the documentation on Haiti withheld by the United States Government under its secrecy rules. Legislation should be passed to ensure freedom of access to such documentation. The duty to remember afforded nations the opportunity to study the causes of past human rights violations, with a view to preventing their recurrence and ensuring that the perpetrators were not rehabilitated, as was now happening in the case of General Hugo Banzer, former dictator of Bolivia and a candidate for the 1997 Bolivian presidential elections. A people without a memory was a people without a future.

97. Ms. VALINA (Latin American Federation of Associations of Relatives of Disappeared Detainees) commended the "basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law" prepared by Mr. van Boven and contained in the annex to document E/CN.4/Sub.2/1996/17. They should be submitted to the Commission as a matter of urgency, for consideration and adoption at the earliest opportunity. Her organization also welcomed the initiative of the sessional working group on the administration of justice and the question of compensation, to begin discussion of a draft convention on the prevention and punishment of enforced disappearances, a phenomenon that had now spread from Latin America to other parts of the world. She urged the Sub-Commission to continue consideration of the draft convention with a view to securing its early adoption.

98. Regarding the set of principles contained in Mr. Joinet's final report on the impunity of perpetrators of violations of human rights (E/CN.4/Sub.2/1996/18), her organization considered that their scope must not be confined to systematic and massive violations, and must encompass the full range of situations in which the problem of impunity arose. The criterion of a "reference period" excluded many practices that should be covered by the principles. Likewise, reconciliation and forgiveness had no place among the purposes of the right to the truth or the right to justice. Principle 35, restricting the jurisdiction of military courts, should be redrafted so as to limit it to purely military offences committed by military personnel. The section dealing with the right to reparation should be brought into line with the principles prepared by Mr. van Boven.

99. Lastly, her organization stressed the importance of guaranteeing habeas corpus and other legal remedies during states of emergency. The mandate of the Special Rapporteur on the question must permit him, not simply to list those countries resorting to states of emergency, but also to analyse the circumstances in which they were imposed and their status vis-à-vis

respect for intangible rights and the criteria of lawfulness established by previous special rapporteurs. All too often, as in the case of Colombia, states of emergency had been abused, to the detriment of the fundamental rights and freedoms of citizens.

100. Ms. HERNÁNDEZ QUESADA (Observer for Cuba), responding to allegations made in a written statement circulated to the Sub-Commission by International PEN, said that Cuba was a State governed by the rule of law, in which persons breaking the law were tried in accordance with due process, regardless of their occupation. Her delegation noted the striking similarity between those accusations and others levelled at Cuba with a view to distorting its image abroad. She could not but be reminded of the Spanish proverb: "Tell me who you walk with, and I'll tell you who you are."

The meeting rose at 6.10 p.m.